

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JEANETTE G. GREENE,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-07-3137
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

**MEMORANDUM AND RECOMMENDATION**

On October 26, 2007, this court issued an order directing petitioner Greene to show cause why her application for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 is not time-barred. Greene has filed a letter stating her belief that her petition presents facts that suggest grounds for equitable tolling (Dkt. 7). The court recommends that Greene's petition be denied as time-barred.

**Background**

Greene was convicted of arson on April 8, 2002 in the 184th District Court for Harris County, Texas and sentenced to 25 years in prison. The First Court of Appeals for Houston affirmed her conviction on November 20, 2003.<sup>1</sup> The Texas Court of Criminal Appeals

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<sup>1</sup> Greene's petition mistakenly gives this date as January 24, 2003. Numerous other dates alleged in her petition are also inaccurate. The dates given here are found on the First court of Appeals and Texas Court of Criminal Appeals websites. Nonetheless, Greene's petition is untimely even assuming the dates alleged in her petition are correct.

refused her petition for discretionary review on May 12, 2004. She did not file a petition for writ of certiorari in the United States Supreme Court, making her conviction final on August 10, 2004. Greene filed a state court application for writ of habeas corpus on August 12, 2005, which was denied on September 20, 2006. Greene filed this federal petition for writ of habeas corpus on September 20, 2007.<sup>2</sup>

### **Analysis**

This case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under the AEDPA, a petition for habeas relief filed by a person in state custody is subject to a one-year period of limitations which runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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<sup>2</sup> We treat the date a *pro se* prisoner deposits a federal petition in the prison mail system as the filing date for purposes of AEDPA's statute of limitations. *See Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir.1998). Greene's petition does not indicate when she placed it in the mail, but she signed it on September 20, 2007, and the court will assume she mailed it that day.

28 U.S.C. § 2244(d)(1).

Greene's conviction was final on August 10, 2004. Greene filed a state application for writ of habeas corpus on August 12, 2005, two days after her federal statute of limitations expired. Because she filed her state court writ applications after the federal period had already expired, § 2244(d)(2) does not extend the one year period established by § 2244(d)(1)(A). *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000). Greene did not file her federal petition until September 20, 2007.

Greene's petition presents no facts that suggest grounds for equitable tolling of the limitations period. Greene alleges only that she was believed that she had one year from the date the state denied her state application for writ of habeas corpus to file her federal petition.<sup>3</sup> Ignorance of the law is not an "exceptional circumstance" that justifies equitable tolling. *Johnson v. Quarterman*, 483 F.3d 278, 286-87 (5th Cir. 2007).

### **Conclusion**

Greene's petition is time-barred and thus is subject to summary dismissal for failure to state a claim. *Jones v. Bock*, 127 S. Ct. 910, 920-21 (2007). The court recommends<sup>4</sup> that Greene's petition be denied with prejudice.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of

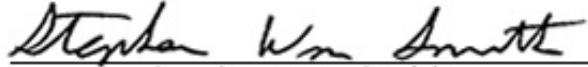
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<sup>3</sup> See addendum to petition (Dkt. 1, at p.21).

<sup>4</sup> To answer the concerns expressed in Greene's October 27, 2007 letter to the court, District Judge Lynn Hughes retains full authority to decide this case, and has merely directed this magistrate judge to *recommend* a disposition pursuant to 28 U.S.C. § 636(b)(1)(B).

factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on December 6, 2007.

  
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Stephen Wm Smith  
United States Magistrate Judge